



Office of The Attorney General
State of Connecticut

**TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE JUDICIARY LAW COMMITTEE
MARCH 14, 2012**

Good morning Senator Coleman, Representative Fox and members of the committee. I appreciate the opportunity to support several important bills being heard by the committee today. The first bill I would like to support is HB 5431, *An Act Concerning the Confidentiality of Information Obtained by the Attorney General During the Course of Antitrust Investigations*. I strongly support this proposal and urge the committee to report favorably upon it. This bill amends section 35-42 of the general statutes to permit my Office to use information and materials obtained in antitrust investigations when taking the oral testimony of third-party witnesses during such investigations.

This change is necessary due to the Connecticut Supreme Court's decision in *Brown & Brown v. Blumenthal*, 297 Conn. 710 (2010). In that case, the Supreme Court held that the statutory language prohibiting "public" disclosure of such information precludes my Office from sharing such information with third party witnesses during investigatory depositions, which themselves are confidential under our antitrust laws.

This interpretation puts Connecticut law at odds with existing federal antitrust laws – the very laws upon which our own antitrust laws are based and with which the General Assembly has expressly declared our laws should be consistently interpreted. More importantly, the current prohibition limits my staff's ability to conduct a full and complete investigation, which is what the General Assembly mandates my Office to do prior to instituting a proceeding.

Antitrust investigations inherently involve the examination of complex – and often secret – business relationships and require review and analysis of tens of thousands of documents, communications and other information obtained from multiple parties with knowledge of the issues involved. Understanding the true import of critical documents and communications is the crux of reaching a reasoned determination of whether a violation has occurred. To fully grasp the context, meaning and intent of key documents and communications necessitates talking to witnesses with knowledge of the substance of that information. Under the Supreme Court's interpretation of section 35-42, however, my antitrust attorneys can only ask questions about these important documents, communications and information from the party that provided it to my office, regardless of whether a third party witness was a recipient of the document, took part in the communication or is otherwise familiar with it.

In conducting antitrust investigations, my responsibility as Attorney General is to get it right when making decisions about whether to sue, settle or terminate investigations. My staff's inability to question certain witnesses with knowledge of the documents, communications and information interferes with a full vetting of the issues, raising the specter that these decisions may be made with less than optimal information; that is not in anyone's interest: the public or the subject of the investigation.

The amendment I propose to the Connecticut Antitrust Act poses no incremental burden on those parties providing such information to my office, whether compelled or obtained voluntarily. In fact, the amendment I propose is consistent with the prevailing law governing the U.S. Department of Justice's and the Federal Trade Commission's use of such information in the conduct of conspiracy and monopolization investigations.

I understand that some business groups and lawyers – the same business groups and lawyers who opposed my Office in the Supreme Court case giving rise to this proposal – oppose the bill as currently drafted. I have reached out to those groups to hear their concerns. I plan to meet with representatives from those groups at my Offices tomorrow afternoon. I hope that through these discussions, we can reach a consensus on a potential compromise that addresses their concerns without depriving my Office of the ability to conduct thorough investigations. If no such compromise is reached, however, I would ask the committee to act favorably upon this proposal. In either case, I will keep the committee apprised of any further developments, including any compromise language to consider as a substitute for the current proposal.

The second bill I would like to support today is HB 5427, *An Act Concerning Notice to the Attorney General of Data Security Breaches Involving the Disclosure of Personal Information*. This proposal amends Connecticut's data security breach statute, section 36a-701b of the general statutes, to require persons responsible for certain data security breaches to notify the Attorney General of any breach following discovery of the breach. Under existing law, failure to comply with the data security breach statute's requirement to notify affected consumers constitutes an unfair trade practice. Though the current statute requires my Office to enforce the law, there is no requirement for those responsible for data security breaches to notify my Office upon discovering a breach. The lack of any such notification requirement severely hampers my Office's ability to ensure compliance with the law and, when necessary, prosecute violations. I hope the Committee will act favorably on the bill.

The last bill I would like to testify about today is SB 353, *An Act Concerning Attachments to Secure Payment of Compensation Owed to the State's Second Injury Fund*. This proposal amends section 31-323 of the general statutes to permit the Second Injury Fund to seek writs of attachment from a workers' compensation commissioner against an uninsured employer when it is likely that a Finding and Award will enter against the Second Injury Fund because of the employer's failure to obtain workers' compensation insurance. The Second Injury Fund currently has the right to recover the amount of its award from such employers, but lacks the statutory authority to seek writs of attachment to secure judgments against those employers. Under current law, only claimants are permitted to seek writs of attachment against employers who lack insurance. Because claimants typically receive compensation in such circumstances from the Second Injury Fund, this statute is rarely, if ever, used by claimants.

Thank you once again for all of your efforts. I look forward to working with the committee on these important matters.